

Date: October 7, 2009
W.I.: 1152
Referred by: Administration

ABSTRACT

Resolution No. 3912

The Resolution authorizes the Executive Director or his designated representative to open an irrevocable trust account with Public Agency Retirement Services (PARS) to deposit funds for Other Post Employment Benefits (OPEB). MTC desires to participate in the Prefunding Plan per the terms and conditions set by PARS. MTC may participate in the plan upon the filing of the PARS Trust Agreement.

Further discussion of this action is contained in the MTC Executive Director's Memorandum dated October 7, 2009.

Date: October 7, 2009
W.I.: 1152
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RE: Adoption and execution of Agreement and Election to Pre-Fund Other Post Employment Benefits through PARS Public Agencies Post-Retirement Health Care Plan Trust

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3912

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Section 66500 et seq.; and

WHEREAS, the MTC is eligible to participate in the PARS Public Agencies Post-Retirement Health Care Trust (the 'Program'), a tax-exempt trust and plan performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code, as amended, and the Regulations issued there under, and is a tax-exempt trust under the provisions of the relevant statutory provisions of the State of California, and

WHEREAS, MTC desires to pre-fund Other Post Employment Benefits (OPEB) through Public Agencies Retirement System (PARS), which requires the filing of an adopted and executed Agreement, and

WHEREAS, the Agreement of MTC to pre-fund OPEB through PARS is attached as Attachment A and incorporated herein by reference; and

WHEREAS, upon the Commission's approval of this Agreement, MTC staff will file an executed Agreement and Election to open an irrevocable trust for other post employment benefits, and

RESOLVED, that the Commission adopt the PARS Public Agencies Post-Retirement Health Care Plan Trust as set forth in Attachment A to this Resolution; and be it further

RESOLVED, the Executive Director or Chief Financial Officer will file the executed Agreement with PARS to pre-fund OPEB as provided for in Attachment A.

METROPOLITAN TRANSPORTATION COMMISSION

Scott Haggerty, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California, on October 28, 2009.

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement ("Agreement") is made this ____ day of _____, 2009, between Phase II Systems, a corporation organized and existing under the laws of the State of California, doing business as Public Agency Retirement Services (hereinafter "PARS") and the Metropolitan Transportation Commission ("Agency").

WHEREAS, Agency has adopted the PARS Public Agencies Post-Retirement Health Care Plan (the "Plan"), and is desirous of retaining PARS, as Trust Administrator to the PARS Public Agencies Post-Retirement Health Care Plan Trust, to provide administrative services;

NOW THEREFORE, the parties agree:

1. **Services.** PARS will provide the services pertaining to the Plan as described in the exhibit attached hereto as "Exhibit 1A" ("Services") in a timely manner, subject to the further provisions of this Agreement.
2. **Fees for Services.** PARS will be compensated for performance of the Services as described in the exhibit attached hereto as "Exhibit 1B".
3. **Payment Terms.** Payment for the Services will be remitted directly from Plan assets unless the Agency chooses to make payment directly to PARS. In the event that the Agency chooses to make payment directly to PARS, it shall be the responsibility of the Agency to remit payment directly to PARS based upon an invoice prepared by PARS and delivered to the Agency. If payment is not received by PARS within thirty (30) days of the invoice delivery date, the balance due shall bear interest at the rate of 1.5% per month. If payment is not received from the Agency within sixty (60) days of the invoice delivery date, payment plus accrued interest will be remitted directly from Plan assets, unless PARS has previously received written communication disputing the subject invoice that is signed by a duly authorized representative of the Agency.
4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in the PARS' standard fee schedule in effect at the time the services are provided and shall be payable as described in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with written notice of the subject services, terms, and an estimate of the fees therefore.
5. **Information Furnished to PARS.** PARS will provide the Services contingent upon the Agency's providing PARS the information specified in the exhibit attached hereto as "Exhibit 1C" ("Data"). It shall be the responsibility of the Agency to certify the accuracy, content and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the Plan, to determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether contributions made to the Plan are in compliance with the Plan or applicable law. In addition, PARS shall not be liable for non performance of Services if such non performance is caused by or results from erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner and pursuant

to the specifications in Exhibit 1C, PARS reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon no less than ninety (90) days written notice to the Agency.

6. **Records.** Throughout the duration of this Agreement, and for a period of five (5) years after termination of this Agreement, PARS shall provide duly authorized representatives of Agency access to all records and material relating to calculation of PARS' fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement. All information so obtained shall be accorded confidential treatment as provided under applicable law.
7. **Confidentiality.** Without the Agency's consent, PARS shall not disclose any information relating to the Plan except to duly authorized officials of the Agency, subject to applicable law, and to parties retained by PARS to perform specific services within this Agreement. The Agency shall not disclose any information relating to the Plan to individuals not employed by the Agency without the prior written consent of PARS, except as such disclosures may be required by applicable law.
8. **Independent Contractor.** PARS is and at all times hereunder shall be an independent contractor. As such, neither the Agency nor any of its officers, employees or agents shall have the power to control the conduct of PARS, its officers, employees or agents, except as specifically set forth and provided for herein. PARS shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.
9. **Indemnification.** PARS and Agency hereby indemnify each other and hold the other harmless, including their respective officers, directors, employees, agents and attorneys, from any claim, loss, demand, liability, or expense, including reasonable attorneys' fees and costs, incurred by the other as a consequence of PARS' or Agency's, as the case may be, acts, errors or omissions with respect to the performance of their respective duties hereunder.
10. **Compliance with Applicable Law.** The Agency shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding the administration of the Plan. PARS shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding Plan administrative services provided under this Agreement.
11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state court of competent jurisdiction.
12. **Force Majeure.** When a party's nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.

13. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to, and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.
14. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Board of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.
15. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - (A) To PARS: PARS; 5141 California Avenue, Ste. 150; Irvine, CA 92617; Attention: President
 - (B) To Agency: Metropolitan Transportation Commission; 101 Eighth Street, Oakland, CA 94607; Attention: _____ [Plan Administrator]Notices shall be deemed given on the date received by the addressee.
16. **Term of Agreement.** This Agreement shall remain in effect for the period beginning _____, 2009 and ending _____, 2012 ("Term"). This Agreement may be terminated at any time by giving ninety (90) days written notice to the other party of the intent to terminate. Absent a ninety (90) day written notice to the other party of the intent to terminate, this Agreement will continue unchanged for successive twelve month periods following the Term.
17. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.
18. **Entire Agreement.** This Agreement, including exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.
19. **Attorneys Fees.** In the event any action is taken by a party hereto to enforce the terms of this Agreement the prevailing party herein shall be entitled to receive its reasonable attorney's fees.
20. **Counterparts.** This Agreement may be executed in any number of counterparts, and in that event, each counterpart shall be deemed a complete original and be enforceable without reference to any other counterpart.
21. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
22. **Effective Date.** This Agreement shall be effective on the date first above written, and also shall be the date the Agreement is executed.

AGENCY:

BY: _____

TITLE: _____ [Plan Administrator]

DATE: _____

PARS:

BY: _____

TITLE: _____

DATE: _____

EXHIBIT 1A

SERVICES

PARS will provide the following services for the Metropolitan Transportation Commission PARS Public Agencies Post-Retirement Health Care Plan:

1. Plan Installation Services:

- (A) Meeting with appropriate Agency personnel to discuss plan provisions, implementation timelines, actuarial valuation process, funding strategies, benefit communication strategies, data reporting and contribution submission requirements;
- (B) Providing the necessary analysis and advisory services to finalize these elements of the Plan;
- (C) Providing the documentation needed to establish the Plan for review by Agency legal counsel;

2. Plan Administration Services:

- (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee of the PARS Trust Program ("Trustee"), based upon information received from the Agency and the Trustee;
- (B) Performing periodic accounting of Plan assets, reimbursements and investment activity, based upon information received from the Agency and/or Trustee;
- (C) Coordinating the processing of reimbursement payments pursuant to authorized direction by the Agency, and the provisions of the Plan, and, to the extent possible, based upon Agency-provided Data;
- (D) Coordinating actions with the Trustee as directed by the Plan Administrator within the scope this Agreement;
- (E) Preparing and submitting a monthly report of Plan activity to the Agency, unless directed by the Agency otherwise;
- (F) Preparing and submitting an annual report of Plan activity to the Agency;
- (G) Facilitating actuarial valuation updates and funding modifications for compliance with GASB 45;
- (H) Coordinating periodic audits of the Trust;
- (I) Monitoring Plan and Trust Compliance with federal and state laws.

3. PARS is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice. In providing the services specified above, PARS will retain qualified professional service providers at its cost as it deems necessary if the service lies outside its area of expertise.

EXHIBIT 1B
FEES FOR SERVICES

PARS will be compensated for performance of Services, as described in Exhibit 1A based upon the following schedule:

(A) An annual asset fee paid from Plan assets based on the following schedule:

<u>For Plan Assets from:</u>			<u>Annual Rate:</u>
\$0	to	\$10,000,000	0.25%
\$10,000,001	to	\$15,000,000	0.20%
\$15,000,001	to	\$50,000,000	0.15%
\$50,000,001	and	above	0.10%

Annual rates are subject to a monthly minimum equal to \$400.00. Annual rates are prorated and paid monthly. The annual asset fee shall be calculated by the following formula [Annual Rate divided by 12 (months of the year) multiplied by the Plan asset balance at the end of the month]. Trustee and Investment Management Fees are not included.

(B) A fee equal to the out of pocket costs charged to PARS by an outside contractor for formatting contribution data on to a suitable magnetic media, charged only if the contribution data received by PARS from the Agency is not on readable magnetic media ("Data Processing Fee").

EXHIBIT 1C

DATA REQUIREMENTS

PARS will provide the Services under this Agreement contingent upon receiving the following information:

1. Contribution Data – Completed Contribution Transmittal Form signed by Plan Administrator (or authorized Designee) which contains the following information:
 - (A) Agency name
 - (B) Contribution amount
 - (C) Signed certification of reimbursement from the Plan Administrator, or authorized Designee
2. Reimbursement Data – Completed Payment Reimbursement Form signed by the Plan Administrator (or authorized Designee) which contains the following information:
 - (A) Agency name
 - (B) Payment reimbursement amount
 - (C) Applicable statement date
 - (D) Copy of applicable premium statement
 - (E) Signed certification of reimbursement from the Plan Administrator (or authorized Designee)
3. Executed Legal Documents:
 - (A) Certified Resolution
 - (B) Adoption Agreement to the PARS Public Agencies Post-Retirement Health Care Plan
 - (C) Trustee Investment Forms
4. Other information requested by PARS and Actuarial Provider